

BURKE 20AU09ES AA.txt

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CASE NO. 07 CV 11387

SECURITIES AND EXCHANGE	:
COMMISSION,	:
	:
Plaintiff,	:
	:
vs.	:
	:
BRIAN N. LINES; SCOTT G.S. LINES;	:
LOM (HOLDINGS) LTD.; LINES	:
OVERSEAS MANAGEMENT LTD.; LOM	:
CAPITAL LTD.; LOM SECURITIES	:
(BERMUDA) LTD.; LOM SECURITIES	:
(CAYMAN) LTD.; LOM SECURITIES	:
(BAHAMAS) LTD.; ANTHONY W. WILE;	:
WAYNE E. WILE; ROBERT J. CHAPMAN	:
WILLIAM TODD PEEVER; PHILLIP	:
JAMES CURTIS; AND RYAN G.	:
LEEDS,	:
	:
Defendants.	:
	X

VIDEO DEPOSITION OF MALCOLM BURKE

taken before Ellen Simpson, Court Reporter, at Blake,
Cassels & Graydon, LLP, Suite 2600, 595 Burrard Street,
Vancouver, British Columbia, Canada on August 20, 2009,
commencing at 9:00 a.m., pursuant to Notice of Taking
Deposition.

□

APPEARANCES:

Patton Boggs, LLP
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1185 Avenue of the Americas
30th Floor
New York, New York 10036
BY Mr. Philip M. Smith
On behalf of the Defendant, Brian Lines

K&L Gates, LLP
1601 K. Street, Northwest
30th Floor
Washington, D.C. 20006
BY Mr. Steve Crimmins
On behalf of the Defendant, Scott Lines

Kellogg, Huber, Hansen, Todd,
Evans & Figel, PLLC
1615 M Street Northwest
Suite 400
Washington, D.C., 20036
BY Mr. Derek Ho
On behalf of LOM.

United States Securities and
Exchange Commission
100 F Street, N.E.
Room 4221
Washington, D.C. 20549-4010
BY Mr. Justin Chretien
and
BY Mr. David Williams
On behalf of the SEC.

ALSO PRESENT: PHILIP WHITFORD, Videographer

□

10:10:09 A I'm sorry. Ifield, Ifield. SHEP is the
 company that --

 Q Okay.

 A (Continuing) -- we put together a company
10:10:16 which raised some capital and contracted with
 Ifield to produce a demonstration vehicle
 with which would demons -- which would go a
 long way to demonstrating the applicability
 of the Ifield Technology to the commercial
10:10:33 vehicle.

 Q Now did you form any company to do this or
 did you --

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A No, we formed a company which I referenced
SHEP Technologies, Inc.

10:10:44 Q SHEP. That's an unusual name.

A Yes, it is. It's stored hydraulic energy
propulsion. It's an acronym.

Q Okay. So they called it SHEP Technologies,
Inc.

10:10:54 A They called it SHEP Technologies.

Q Okay. So when was SHEP formed, do you
remember?

A It was either in 1999 or 2000, in that
timeframe.

10:11:05 Q who formed SHEP?

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12:00:37 Q What was the thinking then? Why did you have
to appoint two new directors?

A Well, the company had now become an operating
company. And it was going to thrive or fail

12:00:49 based on its management and its board. And
the Inside board provided no value on an

ongoing basis to the essential business of
the company and Ray Evans and Peter Humphrey

12:01:05 were both strong engineering types with a
substantial interest in the company and they

made first class directors.

THE VIDEOGRAPHER: We're going off the record.

The time is 12:01.

(PROCEEDINGS RECESSED AT 12:01 P.M.)

11:07:06 BURKE 20AU09ES AA.txt
(PROCEEDINGS RECONVENED AT 12:07 P.M.)
THE VIDEOGRAPHER: We're back on the record. The
time is 12:07.

BY MR. CRIMMINS:

12:08:15 Q I would like to move on to a totally
different area at this point, Mr. Burke.

Have you ever had any contact or
dealings with a company called LOM, also
known as Lines Overseas Management?

A Yes.

12:08:27 Q And how did that come to be?

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12:08:30 A I -- when we made the -- completed the
transaction, or as part of the negotiations
and background to the transaction of Inside
and SHEP combining, part of the discussion
12:08:46 was who was Inside Holdings, what was the
background, who were these people in Bermuda,
and it was explained to me that they were
clients of Lines Overseas Management.

12:09:04 Lines Overseas, I had heard of. I had
never been there and never met any of the
principals, but I was aware that they were
aggressive successful brokerage/banking
operation in Bermuda.

12:09:24 Q Did you ever have any occasion to meet anyone
from Alliance Overseas Management?

A I did. I went there once.

Q You actually traveled to Bermuda?

A I did, yes.

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Q who did you -- well, let me rephrase that.

12:09:35

was that the only the contact you had
with Lines Overseas, that visit to Bermuda?

A It was the only physical --

Q In person?

A (Continuing) -- in person encounter with the
company or its principals anywhere, was my

12:09:46

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12:09:49

one trip to Bermuda.

Q Did you also have any telephone contact with
them?

A I believe I had a few phone calls with Brian
Lines.

12:09:58

Q Brian Lines. And he is the one principle of
LOM?

A He was introduced to me as the managing
director, I think, or words to that effect.

12:10:07

Q Could you give us just a ballpark sense of
how many phone calls, like hundreds or one or
two?

A I believe there was two or three. And then
there was a series of phone calls relating to
some difficulties with SEC filing issues and
I think within the space of a week there was
probably four or five calls.

12:10:21

Q Okay. Now all of those phone calls, as I
understand it were from Brian Lines, from
LOM?

12:10:35

A Yes, Brian Lines.

Q So in total that would be two or three

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general phone calls and then four or five
phones calls about some SEC problem?

12:10:44 A Correct.

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12:10:45 Q And then your only actual physical
face-to-face contact with them would be this
trip to Bermuda.

A Right.

12:10:52 Q Do you remember when the trip to Bermuda
occurred?

A I do.

Q When was that?

12:10:59 A I took a trip to New York. I then went on to
Bermuda, and I then went on London to meet
with our colleagues and directors in London.
And it was December 2002.

Q Are you sure it was December?

A Yes.

12:11:11 Q And did you travel alone or did you travel
with anyone?

A I traveled to New York, Bermuda portion with
Todd Peever.

12:11:25 Q Why were you traveling with Mr. Peever in
Bermuda?

12:11:42 A He was going to introduce me, he had a close
relationship, he informed me, with Mr. -- the
Lines Overseas Group, and did a lot of
business with them he said, historically, and
he thought they would be an asset, an

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12:11:44 investment banking asset to our business and help us raise capital.

Q Okay. Now when you went down to Bermuda and went over to LOM, Lines Overseas Management, 12:12:00 did you make any kind of a presentation?

A Yeah. Day one, I recall I had a lunch meeting with Brian Lines and Mr. Peever and a couple of other people whose names I have forgotten.

12:12:14 Q Did you make any presentation to their staff?

A That was an informal discussion, sitting around the table and just talking about the potential strengths of the concept of the business and, you know, what we were

12:12:25 attempting to do operationally and then I believe it was the next day I made a presentation to seven or eight of their staff.

Q Now the presentation that you made about 12:12:40 SHEP, would it be fair to say that the substance of your presentation would be pretty much the things about SHEP that you told us about this morning?

A I would believe that's correct.

12:12:53 Q When I say you told us this morning, you're

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12:12:56 talking about the description of the business of SHEP and what you hoped to do?

A Yes.

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12:13:04 Q And what was the purpose then, just so we have a clear record, in making this presentation initially at a lunch meeting with Brian Lines and others and then the next day it was a presentation to their staff. What was the purpose of the presentation?

12:13:15 A Well, you may or may not have noticed an announcement of a business combination.

12:13:33 There had been an undertaking by Lines Overseas -- well, Mr. Peever and Mr. Curtis, to assist the company in raising a million-and-a-half dollars. And I think a portion of that five or 600,000 of that was to be a firm commitment and the balance was to be best efforts. And this was part of that process was to inform them as to what we had, what we thought we could accomplish with the money and provide them with a story that they could take to respective investors.

12:13:46

Q When you say "story," you mean what SHEP was actually doing?

12:13:57 A Yes, exactly with the SHEPs story.

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12:14:00 Q That's as you described it to us today?

A Right.

Q Now this commitment by Mr. Peever and Mr. Curtis, did they think that Lines Overseas Management would be helpful in that?

12:14:07

A They informed us that they had a relationship with Lines that dated over a number of years

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12:14:22 and I think involved other companies that had been -- were described as having been successful in terms of raising money and creating value for shareholders.

Q Okay. Did you ever -- did SHEP ever enter into any kind of contractual relationship with LOM?

12:14:48 A I don't recall a specific contractual relationship in terms of retaining someone and paying capital to. We had an understanding that they would do certain things for us.

12:15:06 Q Uh-huh. But you didn't enter into any contractual relationship?

A No, I don't recall -- no formal investment banking document.

12:15:18 Q Now, did you meet with others when you were down there?

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14:41:34 the merger, with the publicly traded entity that the company itself would be able to publicly sell stock, or how was it going to lead to raising funds?

14:41:49 A It was going to sell stock to investors, publicly traded stock to investors, and that's how we would access our capital.

Q So the public -- so the company itself would have an offering, say a stock?

14:42:04 A It did private -- well, it did private placements, generally, to various investment

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groups.

Q Is it like a pipe transaction sometimes referred to? Have you ever heard that term?

14:42:17 A Yeah, no. I've heard of it. I learned all about it. I'm sure two or three of our transactions were pipe transactions.

Q Was it your idea to take the company public, or was it someone else's idea?

14:42:44 A I was an enthusiast to taking it publicly initially in the UK as an IPO, as I referenced earlier. And I became convinced that the only way we can raise capital was to have a publicly traded vehicle.

14:43:02 Q So how did you come in contact with Inside

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14:43:04 Holdings?

A I'm not sure of the exact -- who introduced me to Mr. Peever who was the first person I met in regard to this.

14:43:14 Q Have you ever heard of an individual named Corey Dean?

A Yes, yes. Corey Dean was a lawyer we knew very well. He occupied the floor directly above us in our building.

14:43:26 Q Did Mr. Dean know Mr. Peever?

A He knew Inside Holdings.

Q How do you know that?

A Because he was the lawyer for them and it was quite -- quite coincidental because they've acted for tech -- they acted for a whole

14:43:40

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bunch of companies, and it just so happened
that they acted for Inside Holdings as well.

14:43:55 Q So you came in contact with Mr. Peever and
did you have any -- I think you also
mentioned an individual name Curtis.

A That's correct.

Q What was their connection to Inside Holdings,
if you know?

14:44:08 A They worked very closely with Lines Overseas
Management in Bermuda and they informed me

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14:44:13 that Lines Overseas Management and their
clients were the controlling shareholders of
Inside Holdings. And they further informed
me that they were -- that they had had a
14:44:27 long, relatively long, successful investment
banking relationship with other companies,
with LOM.

Q And was this an initial meeting with
Mr. Peever or is this something that was
14:44:42 explained to you over a period of time?

A Well, there is reference to it in the initial
meeting because he was there to talk about
Inside Holdings, which he was speaking for,
you know, Curtis.

14:44:55 And so I asked a bunch of questions and
value added what was value added with this
shell compared to other shells and what could
they do versus what a publicly traded shell
might do, so I am sure we got into a

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reasonable amount of detail early on.

Q What was the value added with respect to
Inside Holdings that was explained to you?

A It was explained to me that the Lines
Overseas Group was very entrepreneurial.

14:45:20 They were very active, even in the
□

14:45:25 depressed markets, and they would be a good
relationship for SHEP going forward in
terms of meeting their capital needs and so
forth.

14:45:37 Q Any other aspects of value that this
particular shell corporation might bring?

A There is no human capital that was of any
interest in terms of expertise. It had, they
said, the ability to raise some money from
14:45:57 some of their inside, you know, core
shareholders, so we would get a little bit of
money at the outset. And, but more
importantly, they would be able to work with
the company to raise substantial amounts of
14:46:13 money going forward.

Q And was it explained to you how -- when you
say "they," who are you referring to?

A I am referring to the Lines Overseas Group as
investment bankers on behalf of old clients
14:46:27 of theirs, Peever, Curtis, and I presume
their three large shareholder of Inside
Holdings.

Q So was it explained to you how Lines Overseas